

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

NUEMI RUIZ,

Plaintiff,

v.

GC Services, L.P.,

Defendant.

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Civil Action No. 4:16-cv-00890-O-BP

REPORT AND RECOMMENDATION ON DEFENDANT'S MOTION TO DISMISS

Before the Court is Defendant GC Services, LP's Motion to Dismiss All Counts of Original Complaint (ECF No. 6), filed on October 14, 2016, and Plaintiff's Response in Opposition to Defendant GC Services, LP Motion to Dismiss All Counts of Original Complaint (ECF No. 10), filed on October 21, 2016. This case was referred to the undersigned pursuant to Special Order No. 3-251 on September 26, 2016. A motion to dismiss for failure to state a claim upon which relief can be granted is an enumerated motion to which the undersigned may only issue a report and recommendation to United States District Judge Reed O'Connor. 28 U.S.C. § 636(b)(1)(A). After considering the pleadings and applicable law, the undersigned RECOMMENDS that Defendant's Motion to Dismiss (ECF No. 6) be DENIED without prejudice as MOOT.

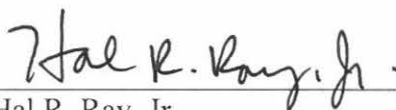
Pursuant to Rule 15(a) of the Federal Rules of Civil Procedure, the Court granted Plaintiff's motion to amend her complaint as a matter of course. Fed. R. Civ. P. 15(a); ECF No. 8. By filing Plaintiff's Amended Complaint (ECF No. 9), Plaintiff superseded her original complaint; therefore, Defendant's Motion to Dismiss should be denied as moot, without prejudice to

Defendant's right to refile.¹ *Thomas v. Duetsche Bank Nat. Trust Co.*, No. 3:12-CV-5014-M BF, 2013 WL 673988, at *1 (N.D. Tex. Jan. 21, 2013), *report and recommendation adopted*, No. 3:12-CV-5014-M BF, 2013 WL 673983 (N.D. Tex. Feb. 25, 2013); *see also Mangum v. United Parcel Servs.*, No. 3:09-CV-0385-D, 2009 WL 2700217, at *1 (N.D. Tex. Aug. 26, 2009).

Because Plaintiff's amended pleading superseded her original pleading, on which Defendant's Motion to Dismiss was based, the undersigned RECOMMENDS that Defendant's Motion to Dismiss (ECF No. 6) be DENIED without prejudice as MOOT.

A copy of this report and recommendation shall be served on all parties in the manner provided by law. Any party who objects to any part of this report and recommendation must file specific written objections within 14 days after being served with a copy. *See* 28 U.S.C. § 636(b)(1)(B) and Fed. R. Civ. P. 72(b)(1). In order to be specific, an objection must identify the specific finding or recommendation to which objection is made, state the basis for the objection, and specify the place in the magistrate judge's report and recommendation where the disputed determination is found. An objection that merely incorporates by reference or refers to the briefing before the magistrate judge is not specific. Failure to file specific written objections will bar the aggrieved party from appealing the factual findings and legal conclusions of the magistrate judge that are accepted or adopted by the district court, except upon grounds of plain error. *See Douglass v. United Services Auto. Ass'n*, 79 F.3d 1415, 1417 (5th Cir. 1996) (en banc).

Signed October 31, 2016.



Hal R. Ray, Jr.
UNITED STATES MAGISTRATE JUDGE

¹ The Court suggests no view on the merits of the Amended Complaint or whether it is subject to dismissal under Rule 12(b)(6).